

REMARKS

Claims 1-4, 6-10, 12, 13, and 15-18 are pending in the instant application with claim 1 in independent form. No claims are currently amended. Dependent claims 5, 11, and 14 were previously cancelled. No claims are presently added or cancelled.

Claims 1-4, 7-10, 12, 13, and 16-18 stand rejected under 35 USC §103(a) as being unpatentable over Morita et al. (PCT Pub. No. WO03/072656) in view of Kuwabara et al. (US Pre-Grant Pub. No. 2003/0010962). Claim 5 stands provisionally rejected under the judicially-created doctrine of obviousness-type double patenting over co-pending U.S. App. Serial No. 11/912,631. Dependent claims 6 and 15 are objected to as depending from a rejected base claim, but would otherwise be allowable if rewritten in independent form.

Rejections of Claims 1-4, 7-10, 12, 13, and 16-18 Under 35 U.S.C. §103(a) Over Morita et al. in View of Kuwabara et al.

Upon further consideration of the prior art relied upon by the Examiner to establish the instant rejections, and upon further consideration of responsibility for the subject matter of Morita et al. that is relied upon by the Examiner to establish the instant rejections, it was discovered that the subject matter of Morita et al. that is relied upon by the Examiner to establish the instant rejections is the inventors' own work. In particular, inventors Morita and Ueki are named inventors for both the instant application and the '656 publication to Morita et al. As make clear through the attached Declaration under 37 CFR §1.132, the relevant portions of Morita et al. that are relied upon by the Examiner to establish the instant rejections represent the work of Morita and Ueki. Further, the Applicants note that Morita et

al. is only prior art under 35 U.S.C. §102(a). To explain, the instant application has an earliest priority date of November 7, 2003. Meanwhile, Morita et al. was first published on September 4, 2003, which is less than one year prior to the earliest priority date of the instant application. In view of the foregoing, the Applicants respectfully submit that Morita et al. is unavailable for the Examiner's use to reject the instant claims.

In view of the foregoing, the Applicants respectfully submit that the rejections of claims 1-4, 7-10, 12, 13, and 16-18 under 35 USC §103(a) over Morita et al. in view of Kuwabara et al., as they now apply to independent claim 1, are overcome and must be withdrawn.

Rejection of Claim 1 under Obviousness-type Double Patenting Over the '631 Application

The Applicants continue to request that this rejection be held in abeyance until there is an indication of allowable subject matter in the instant application.

The Applicants respectfully submit that the instant claims are in condition for allowance and respectfully request such allowance. Because the deadline for filing the instant Response with payment for a one-month extension of time expired on November 29, which is a Sunday, the Applicants respectfully submit that this Response is filed timely with the appropriate fee for a one-month extension of time. As such, it is believed that no further fees are presently due. However, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 08-2789 in the name of Howard & Howard.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS, PLLC

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Date

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